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their individual capacities*

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

ANGELICA CLARK, ELLEN GASS,
NATHANIEL WEST, and ROWAN MAHER,
Individually and on behalf of all similarly
situated individuals

Plaintiffs

v.

CHAD WOLF, Acting Secretary United States
Department of Homeland Security;
KENNETH T. CUCCINELLI, Senior Official
Performing the Duties of the Deputy Secretary
United States Department of Homeland
Security; GABRIEL RUSSELL, Regional
Director with the Department of Homeland

Civil Action No. 3:20-cv-01436-IM

JOINT MOTION TO VACATE RULE
16 SCHEDULING ORDER
DEADLINE

Security's Federal Protective Service; ALLEN JONES; RUSSEL BURGER; ANDREW SMITH; MARK MORGAN; RICHARD CLINE; JOHN DOE SUPERVISORY DEFENDANTS 1-60; JOHN DOE PATROL LEVEL DEFENDANTS 61-200, agents of the U.S. Marshals Service, Federal Protective Service, U.S. Department of Homeland Security and U.S. Customs and Border Protection, acting in concert and in their Individual capacities,

Defendants.

LOCAL RULE 7-1 CERTIFICATION

Counsel for Plaintiffs has conferred with counsel for Defendants Chad Wolf and Kenneth Cuccinelli ("the parties"), and the parties stipulate to the relief sought in this motion.

MOTION

Pursuant to Federal Rule of Civil Procedure (FRCP) 16(b)(2), the parties respectfully move to vacate the deadline for this Court to issue a scheduling order under FRCP 16(b)(1). The deadline is currently January 29, 2021. The parties propose that the Court vacate the deadline until service is complete on the John Doe defendants, once those defendants have been identified and named in an amended complaint. Thereafter, the parties propose to confer within 30 days of completion of service for the purpose of proposing a new deadline for the scheduling order.

MEMORANDUM OF LAW

FRCP 16(b)(2) states that, "unless the judge finds good cause for delay," the judge must issue a scheduling order "within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared. The deadline for issuing the scheduling order currently is January 29, 2021.

Good cause exists for an extension of this deadline. Pursuant FRCP 26(f), the parties are required to hold an initial conference to develop a discovery plan no later than 21 days before the court issues its scheduling order pursuant to Federal Rule of Civil Procedure 16(b)(2).¹ But Plaintiffs have sought, and this Court has ordered, limited third-party discovery for the purpose of identifying and naming the John Doe defendants. Plaintiffs are in the process of conferring with counsel for the United States regarding the scope of “any appropriate protective orders” that this Court ordered may apply to that third-party discovery, *see* ECF 26, and are briefing for this Court certain issues that they have been unable to resolve through that process. Once those issues are resolved, Plaintiffs intend to conduct the limited third-party discovery that this Court has granted. Additionally, Plaintiffs filed a First Amended Complaint on December 22, 2020, *see* ECF 27, and are in the process of completing service on additional named defendants. Defendants, for their part, intend to file motions to dismiss on January 20, 2021.

The parties therefore agree that a Rule 26(f) conference is premature at this point, and that such conference should take place at a later date. The parties stipulate that good cause exists to extend the deadline for this Court to issue its scheduling order. The parties propose that the court vacate the current Rule 16 deadline. The parties further propose that they confer within 30 days of service on the John Doe defendants, once they have been identified and named in an amended complaint, for the purpose of proposing a new deadline for the scheduling order.

SO STIPULATED.

¹ The parties recognize that Local Rule (LR) 26-1(1) states that “[t]he parties must hold a Fed. R. Civ. P. 26(f) initial conference of counsel for discovery planning within 30 days after a defendant files a responsive pleading or a motion under Fed. R. Civ. P. 12,” and that LR 16-2(a) requires that the parties request a Rule 16(b) conference “during or promptly after” the 26(f) conference. It is unclear, however, whether these local rules supplement or replace the deadlines set out in the federal rules.

DATED this 8th day of January, 2021.

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